IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MFA.No. 488 of 2002(E)

OPMV.3405/1995 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM

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APPELLANT: PETITIONER

INDIRA PRABHAKARAN NAIR,
AGED 64 YEARS, W/O.SRI. PRABHAKARAN NAIR,
PALLIPURATH HOUSE, THEKKUMBHAGAM,TRIPUNITHURA.

BY ADV. SRI.ANIL S.RAJ
SMT.K.N.RAJANI
SRI.RADHIKA RAJASEKHARAN P.

RESPONDENTS: RESPONDENTS

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1. V.RAVI @ RAVICHANDRAN,
S/O.VELU GOUNDER,20, MURUGESAN MUDALI STREET,
CHINNAMANUR P.O., UTHAMAPALAYAM, TAMILNADU.

* 2. N.V.BABU, S/O.VAREETH N.K.,
CHALAKKAKAM HOUSE, PANAYIKULAM(VIA), ALWAYE. (DELETED)

(THE NAME OF THE 2ND RESPONDENT IS DELETED FROM THE PARTY ARRAY AT THE RISK OF THE APPELLANT, AS PER ORDER DATED 6.7.2007 ON I.A.NO.1401/2007)

3. THE ORIENTAL INSURANCE CO. LTD.,
REPRESENTED BY ITS DIVISIONAL MANAGER,
COCHIN-16.

BY ADV. SRI.M.JACOB MURICKAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A.No.488 OF 2002

Dated this the 6th August, 2007.

J U D G M E N T

The petitioner in O.P.(M.V.) No.3405/1995, on the file of the Motor Accidents Claims Tribunal, Ernakulam, is the appellant. This appeal is filed against an order passed by the Tribunal dismissing the claim petition filed by the appellant.

2. The appellant filed the Original Petition claiming compensation against respondents. It was alleged that she is the owner of a building bearing Door Nos.XXVI/493, 494 AND 495 of Tripunithura Municipality, which is situated on the side of Tripunithura-Poothotta road. It was averred that on 2.9.1995, at about 2.45 p.m., a lorry bearing Registration No.TN-60/D 6999, driven by the second respondent in a rash or negligent manner went through the road, hit against the compound wall and building of the appellant, causing extensive damages. It was averred that the first respondent is the owner of the vehicle and the 3rd respondent is the Insurer of the same. The appellant claimed an amount of Rs.60,000/= as compensation. The respondents 1 and 2 did not appear and contest the matter. The

3rd respondent filed a written statement contending that there was no negligence on the part of the second respondent, driver of the lorry. The amount of compensation claimed was also disputed. It was admitted that the vehicle was covered with a valid policy of insurance. It was also averred that the appellant will have to prove her claim, try to get compensation by adducing evidence. The Tribunal found that in Coloumn No.22 which deals with title to the property of the person whose property was damaged, was stated as not applicable. It was also averred that the petitioner failed to prove the title over the land, and hence, dismissed the application. Challenging that award, this appeal is filed.

3. It is true that in coloumn No.22, it is recorded as not applicable. But a reading of the petition as a whole shows that the one and only claim raised in the application was compensation, on account of the damages caused to the petitioner. The view taken by the Tribunal that the appellant failed to prove title of building is unsustainable. Ext.A10 is an agreement entered into between the appellant and her sisters. It shows that the appellant was allowed to put up a building in the land belonging to her sister. It is true that Ext.A10 will not confer title to the land. But in a proceedings of this

nature, title to the land, in which the building situates, is immaterial. It is a trite law that everything attached to the land does not belong to the owner. In India, the Law is that the land may belong to one person and the building may belong to other person. (See **Mammunhi Alias Mahammad Beery v. Kunhibi** (1960 KLT 1343). In Thankamma Kunjamma and others v. Gopalakrishnan Unnithan (1992 (1) KLJ 415), it was held as follows:-

> "A building need not necessarily belong to the owner of the land and there can be two owners, one for the land and another for the building. A building can be separately owned by a person other than the ower of the land. The principle that 'what is affixed to the soil belong to the soil' does not apply in India."

The mere fact that the appellant is having no title to the land is not a ground to deny the compensation. She had produced documents to show that the building stands in her name and she was paying the building tax to the municipality. No other person has also come forward with a claim or title over the building. So, the view taken by the Tribunal that since the land in which the building situate does not

belong to the appellant, she is not entitled to get compensation, is illegal and unsustainable. The Tribunal has not considered the quantum of compensation also. So, the case has to go back.

In the result, the appeal is allowed. The Order passed by the Tribunal dismissing O.P.(M.V.) No.3405/1995, is hereby set aside. The case is remanded to the Motor Accidents Claims Tribunal, Ernakulam, for fresh disposal, in accordance with law, after giving a reasonable opportunity to both sides, to amend the pleadings and adduce evidence.

The parties shall appear before the Tribunal on 20th September, 2007.

K.PADMANABHAN NAIR,
JUDGE

nj.

K.PADMANABHAN NAIR, J.

M.F.A.No.488 of 2002

J U D G M E N T

Dated: 6th August, 2007.